IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

WEDNESDAY, THE 12TH SEPTEMBER 2007 / 21ST BHADRA 1929

ST.Rev..No. 270 of 2007

TA.180/2006 OF SALES TAX APPELLATE TRIBUNAL, ADDL.BENCH, KOTTAYAM, DATED 28.12.2006

REVISION PETITIONER: APPELLANT:

R.LAIJU,
"DADA DRUGS", THODUPUZHA.

BY ADV. SRI.N.K.MOHANLAL

RESPONDENTS: RESPONDENTS:

1. THE DEPUTY COMMISSIONER, (APPEALS), COMMERCIAL TAXES, ERNAKULAM.

2. THE AGRICULTURAL INCOME TAX AND SALES TAX OFFICER, DEPARTMENT OF COMMERCIAL TAXES, FIRST CIRCLE, THODUPUZHA.

3. THE SALES TAX APPELLATE TRIBUNAL, KOTTAYAM, KOTTAYAM P.O.

4. THE DEPUTY TAHSILDAR (RR), THODUPUZHA TALUK OFFICE, THODUPUZHA P.O., IDUKKI DISTRICT.

5. THE VILLAGE OFFICER, KUMARAMANGALAM VILLAGE OFFICE, KUMARAMANGALAM P.O., THODUPUZHA, IDUKKI.

BY GOVERNMENT PLEADER SRI.K.B.PRADEEP

THIS SALES TAX REVISION HAVING COME UP FOR ADMISSION ON 12/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

H.L.DATTU, C.J. & K.T.SANKARAN,J.

S.T.Revision NO. 270 OF 2007

Dated this the 12th September, 2007

O R D E R

H.L.DATTU, C.J.

Petitioner is a dealer registered under the Kerala General Sales Tax Act. He has engaged in the business of selling of Allopathic medicines in the name and style as “Dada Drugs” at Thodupuzha. The assessment year in question is 2000-01.

2. The assessee, being aggrieved by the orders passed by the Deputy Commissioner (Appeals), Commercial Taxes, Ernakulam, in S.T.A.No.4550 of 2005, dated 21.3.2006, had filed a Second Appeal before the Kerala Sales Tax Appellate Tribunal, Additional Bench, Kottayam as T.A.No.180 of 2006.

3. The Tribunal by its order dated 28.12.2006, has rejected the appeal for non-prosecution. The order passed by the Tribunal is as under:

> “When the case was taken up for hearing today, nobody was present for the appellant in spite of notice. Hence the appeal is dismissed for default of non-appearance as provided for in Regulation 46 of the Kerala Sales Tax Appellate Tribunal Regulations, 1966.”

4. Aggrieved by the aforesaid order passed by the Tribunal, the assessee is before us in this Sales Tax Revision. The assessee has raised the following questions of law for our consideration and decision. They are as under:

> “i) Whether the Tribunal is competent to dismiss the appeal for default?

ii) Whether the word “may” occur in Regulation 46 of the Kerala Sales Tax Appellate Tribunal Regulations, 1966 can be read as mandatory or directory?

iii) Whether revision petitioner is liable to produce the purchase and sales bills during the period when business was closed?

iv) The learned Tribunal ought to had seen that Assessment Authority and Appellate Authority below are erred in rejecting the appellants return and accounts and completing the assessment without considering the appellants objection to the pre-assessment notice in a judicious manner.

v) The learned Tribunal ought to have seen that the entire turnover is of second sales and the purchasers are only from the local dealers. Since the assessment taking the turnover are taxable is without basis and hence it is unsustainable.

vi) The learned Tribunal ought to have seen that the entire purchases are accounted and the purchase statement filed also confirms the same. The non-production of purchase bill is only an omission for which the disallowance of exemption towards second sales may be allowed in full.

vii) The learned Tribunal ought to have seen that the purchase bills are available with the appellant for varification and the appellant shall produce the same at the time of hearing the appeal, before the Hon'ble Tribunal. Hence the exemption towards second sales may be allowed in full.”

5. In order to answer the questions of law raised for our consideration and decision, Regulation 46 of the Kerala Sales Tax Appellate Tribunal Regulations, 1966 requires to be noticed by us. The

said regulation reads as under:

> "46. Hearing:- (1) Where on the date fixed for hearing or on any other date to which the hearing may be adjourned, any party does not appear when the proceeding is called on for hearing, the Tribunal may dispose of the proceedings ex-parte or dismiss the appeal or application, as the case may be, for default.
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> (2) On the date fixed for hearing or on any other date to which the hearing may be adjourned, the appellant or applicant shall ordinarily be heard first in support of the appeal or application. The Respondent, if necessary, shall be heard next and in such a case the party beginning shall be entitled to reply."

A careful reading of the aforesaid regulation would indicate that the Tribunal has two alternatives when the matter is posted for hearing. Firstly, to decide the appeal exparte and secondly, to dismiss the appeal for default. Regulation 47 of the Regulations provides that , if for any reason, the assessee is aggrieved by an order passed by the Tribunal in exercise of its powers under Regulation 46 of the Regulations, the assessee may file an application for restoration of the appeal or application.

6. The parameters of the revisional jurisdiction of this Court is very much limited. Section 41 of the Act authorises this Court to entertain a Revision Petition provided, the Tribunal has failed to decide a question of law or has decided a question of law erroneously. Rejection of an appeal by the Tribunal for default/non-prosecution would not come within the ambit of the aforesaid two ingredients. In that view of the matter, the Revision Petition cannot be entertained by us. Accordingly, the Sales Tax Revision

is rejected. However, liberty is granted to the assessee to make an appropriate application as envisaged under Regulation 47 of the Regulations within a month's time from today. If such an application is filed within the time granted by this Court, the Tribunal is directed to consider the same in accordance with law.

With these observations, the Sales Tax Revision is rejected.

(H.L.DATTU)
Chief Justice

(K.T.SANKARAN)
Judge

ahz/dk